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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Policies and Rules Concerning)
Toll Fraud)

CC Docket No. 93-292

**COMMENTS OF THE
NORTH AMERICAN TELECOMMUNICATIONS ASSOCIATION**

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The North American Telecommunications Association ("NATA") submits the following comments in response to the Commission's Notice of Proposed Rulemaking concerning toll fraud, FCC 93-496, released December 2, 1993. NATA's comments focus primarily on the portions of the Notice that relate to prevention of toll fraud that occurs by remotely accessing customer premises equipment ("CPE").

SUMMARY

The Commission should establish an advisory committee to develop detailed recommendations regarding particular issues that require expert review. At the same time, however, the Commission should expeditiously adopt rules that establish fundamental principles limiting customer liability for toll fraud.

NATA supports a requirement for equipment manufacturers and vendors to give specifically defined warnings to their customers. However, other requirements should not be imposed on manufacturers and vendors unless they are very clearly and concretely defined.

Manufacturers and vendors who take such clearly defined steps should not be held liable for fraud.

Carriers, as the parties who can most efficiently prevent fraud, should have primary responsibility for preventing fraud and bearing losses associated with fraud. Interexchange carrier ("IXC") obligations must not be limited to warning customers about toll fraud. IXC's should be required to undertake affirmative monitoring and other measures to protect their networks from fraud.

In addition, IXC's should be prohibited from holding customers liable for toll fraud beyond a nominal dollar amount, unless the customer has failed to take clearly defined, easy-to-understand steps, which must be spelled out in the Commission's rules and clearly communicated by carriers to their customers.

STATEMENT OF INTEREST

NATA is a trade association representing manufacturers, suppliers, distributors, and retailers of customer premises equipment ("CPE") and related business telecommunications services. Founded in 1970, NATA exists to promote competitive markets and healthy sales and support channels for users of business and public communications products and services. NATA has actively participated in FCC proceedings affecting CPE markets. NATA supports regulatory policies that promote high quality equipment and service offerings and that ensure fair competition in the telecommunications equipment and services distribution marketplace. NATA has actively supported the adoption of policies that promote fair and efficient solutions to the growing problem of toll fraud. NATA

regularly informs its members regarding developments and techniques of toll fraud prevention, and has published an extensive handbook on the subject, Remote Access Toll Fraud: Detection and Prevention (1992).

DISCUSSION

I. THE COMMISSION SHOULD IMMEDIATELY ADOPT A FEDERAL POLICY AND ESTABLISH AN ADVISORY COMMITTEE TO ADDRESS SPECIFIC IMPLEMENTATION ISSUES

The Commission's Notice indicates that the Commission is embarked on an important effort to address the issue of toll fraud in a systematic and fair way. NATA is pleased that the Commission is undertaking a reevaluation of the existing allocation of liability for fraud committed by remotely accessing PBXs and other CPE. NATA is concerned, however, that the Notice does not reflect adequate recognition of the levels of effort that realistically can be expected from various industry groups in addressing remote access fraud.

A. Carriers Must Be Required to Cease Shifting Their Responsibility to Others

Clearly, all affected parties, including customers, and equipment manufacturers and vendors, need to contribute to prevention of toll fraud. However, the Notice does not sufficiently recognize the role that carriers should play in preventing fraud. The Commission discusses a number of possible ways to address PBX-related fraud more effectively, and explores various alternatives for reallocating liability, including additional obligations that might be imposed on carriers. However, the only requirement that

the Commission "tentatively concludes" should be imposed on carriers is a requirement to warn their customers of the risks of toll fraud.

Carrier obligations must not be limited to warning their customers. It is, after all, the carriers whose network services are being stolen when fraud occurs. While the fraudulent call may reach the network by passing through a PBX or other CPE, it is carriers who are ultimately responsible for the integrity of their billing systems. It is very significant that the billing systems currently used by carriers are not well designed to prevent fraud. First, carriers rely largely upon a billing mechanism -- direct "1+" dialing -- that is inherently extremely vulnerable to unauthorized access. Second, carriers generally rely on traditional paper-based billing methods that do not inform a customer of its "account balance" more than once a month. Third, carriers in general do not provide, as a matter of course, any "credit limit" to stop a customer's losses from unauthorized calling. Fourth, carriers in general do not ordinarily monitor a customer's line for unusual calling patterns. While some carriers are beginning to perform some of these functions for some customers, they are far from being universally available.

Yet, carriers are far better situated than other parties to take the kinds of systematic, centralized measures that can most effectively control toll fraud. Once some carriers began implementing fraud prevention safeguards -- e.g., SprintGuard -- for some customers, they reported greatly decreased fraud.

It was several years ago that toll fraud grew to crisis proportions. Losses are currently an estimated \$1-4 billion in losses annually. In light of this history, credit limits, account monitoring, and customer notification should already have become standard features of IXC billing systems -- available as a matter of course to all business customers. That they have not is cause for great concern. Clearly, the incentives for IXCs to provide these as standard features have not been great enough. Apparently, toll fraud is still a profit center for IXCs -- or at least does not cause them to incur net losses sufficient to justify changes in their billing practices.^{1/}

To provide the necessary incentive, the Commission must now rule that carriers may not hold customers strictly liable for fraud. Carriers should be required to absorb their own fraud losses, under most circumstances, unless they can show that the customer has been negligent. Customer fraud prevention obligations should be explicitly defined and clearly communicated by carriers to customers. If the customer has implemented a few easily identifiable steps, it is reasonable to expect the carrier to

^{1/}Because they have been allowed to adopt tariff provisions that purport to shift all fraud liability to the customer, IXCs have been able to collect on a substantial percentage of fraudulent calls. These are predominantly international calls, for which the revenue collected is generally well in excess of marginal costs, including access costs. Thus, the IXC may actually earn an overall profit on toll fraud, even taking into account the percentage of "uncollectibles." In any event, IXCs do not lose enough money on toll fraud to give them the kind of incentive that is probably necessary if the toll fraud problem is to be fully and effectively solved.

absorb fraud losses -- or at least, to limit customer losses to a nominal sum.

B. Equipment Manufacturers Have Limited Ability to Prevent Toll Fraud

Equipment manufacturers and vendors can take some steps to help prevent toll fraud. As the toll fraud problem has escalated, most major equipment manufacturers have been motivated to design new fraud prevention safeguards into their equipment, both as a matter of sound business practice and in order to avoid potential liability. Some of these measures are discussed in NATA's publication, Remote Access Toll Fraud: Detection and Protection (1992).

However, equipment manufacturers cannot effectively control the risk of fraud once their equipment is configured "in the field." First, many equipment manufacturers are not directly involved in the retailing of their equipment to end users. Even authorized dealers may not be involved, given the diversity of distribution practices in the industry. Further, there is a growing secondary or "gray" market in used and/or refurbished telephone equipment. Thus, equipment can reach the end user in a variety of ways, and manufacturers are not always in a position to control the manner in which their equipment is installed or the instructions given to end users.

Second, end users frequently do not purchase all their equipment from the same source: an end user's "system" may comprise a PBX purchased from one source, an auto attendant from another source, a voice mail system from a third, etc. Any of these

components may be the "point of entry" that is implicated in toll fraud. It is simply not practical for a manufacturer to take into account all possible ways in which equipment can be configured with equipment not designed by that manufacturer.

Third, once a piece of equipment is sold and installed, the manufacturer has virtually no control over whether it is operated in accordance with instructions (e.g., whether passwords are set based on security concerns or the convenience of users). In addition, the manufacturer has no means of ensuring that the equipment is monitored for unusual calling patterns.

Finally, any single product, no matter how well designed, can be effective in helping prevent toll fraud only at those customer locations where it is used. The existing installed base contains many thousands of PBXs and other CPE products of varying vintages. Those who commit toll fraud look for the weak points that allow access. When one potential access point is "plugged" by installing improved CPE, toll fraud criminals move on to the next. It is unrealistic to expect that every potential access point -- i.e., every business telecommunications system -- or even a majority of them could be effectively shut off from fraud in the foreseeable future. Therefore, while an important contribution to preventing toll fraud can be and is being made by CPE safeguards, such safeguards can never have the same "bang for the buck" as improved safeguards in the network.

For all these reasons, while it is reasonable to require manufacturers to take specifically identified steps such as

providing warnings to customers, it is not realistic to expect that manufacturers can effectively and efficiently stop toll fraud "at the source."^{2/}

C. Customers Require Relief From Liability

In any event, while the Commission appears to have ample legal authority to determine the allocation of liability as between carriers and their customers, it is not clear to what extent the Commission has legal authority to determine the liability of equipment manufacturers and vendors vis-a-vis their customers.

The Commission has clear authority to address fraud issues by redressing the imbalance in the carrier-customer relationship, and that should be the focus of its effort to control the problem of toll fraud.

The current "system" for assigning liability for toll fraud puts all the onus on "customers," who cannot reasonably be expected to take the lead in preventing fraud. It is unrealistic to expect each of hundreds of thousands of business users, who generally have no particular telecommunications expertise, to take the time to educate themselves about fraud, to try to figure out what they need

^{2/}Even if manufacturers could somehow design equipment that would be in some manner "fraudproof," the economic realities of the CPE industry will not allow it. Profit margins in the PBX industry have been slim or non-existent for many years. Even the largest PBX manufacturers would not be in a position to devote the R&D resources to design such "fraudproof" equipment, and users, who have come to expect extremely low-priced CPE, would not buy such premium equipment.

to add to their CPE or network services in order to prevent as much fraud as possible, and to spend the money to bring each of their individual locations up to state-of-the-art fraud protection. The current system relies on litigation to bring customers into line, and it has imposed excessive costs on them, as well as generating a lot of unnecessary stress, ill will, and confusion throughout the community of business end users.

Carriers can address the problem far more effectively than individual customers; therefore, carriers should be given primary responsibility for preventing fraud. The Commission shall rule that carriers may not hold customers liable for fraud. If the customer has taken reasonable steps to prevent fraud, then the carrier must take responsibility for any fraud associated with that customer's account.

The Commission should then establish a federal advisory committee, as discussed below, to flesh out the details of federal fraud policy. See below, Based on the Advisory Committee recommendations, the Commission should limit CPE owners' obligations to a few simple steps which are very well defined. Any CPE owner which takes these steps should be relieved of liability.

II. THE COMMISSION SHOULD ESTABLISH A FEDERAL ADVISORY COMMITTEE

The Commission asks whether a Federal Advisory Committee should be established to explore specific solutions to toll fraud issues. Notice, ¶ 13. NATA supports this proposal. NATA has long advocated an advisory committee approach to toll fraud. An

advisory committee has significant advantages over existing industry groups which operate largely in secret, so that the issues they discuss cannot be effectively ventilated among the industry at large. Further, direct Commission supervision is necessary to ensure that a fair solution is reached.

However, the formation of an Advisory Committee must not stand in the way of immediate fraud relief. The Commission must take immediate action to correct the imbalance in allocation of liability between carriers and CPE owners, and to more clearly define the specific obligations of manufacturers, vendors, and customers. The Commission should resolve the basic policy issues in this rulemaking at this time, while referring the details of specific issues (such as the precise language of equipment warnings) to the advisory committee.^{3/}

III. EQUIPMENT WARNING REQUIREMENTS SHOULD BE DEVELOPED BASED ON ADVISORY COMMITTEE RECOMMENDATIONS

The Commission proposes that manufacturers be required to provide warnings regarding the potential risk of toll fraud associated with use of equipment and full instructions regarding the use of default codes. Notice, ¶40 and Appendix E. NATA supports a warning requirement. However, a number of details need to be addressed, as discussed below. NATA believes that development of effective, efficient equipment warnings should be referred

^{3/}In these comments, we make some specific suggestions regarding equipment warnings and other details, even though they are provisional and subject to further refinement by an advisory committee.

to the advisory committee established by the Commission, with a directive to return a recommendation to the Commission within six months.

The Commission proposes two types of manufacturer warnings: a short version, to be placed on the "exterior packaging" of equipment, and a longer one to be included in the user's instruction manual "or other literature accompanying the equipment."

It is important for the Commission to specify exactly what types of equipment must have the warning. For example, many types of equipment are rarely implicated in toll fraud. On the other hand, as discussed above, toll fraud can involve a variety of types of equipment other than a PBX.

We also believe the Commission should be as specific as possible regarding the language of the warnings, where they should be placed, etc. For example, the short version of the warning might state:

WARNING: UNDER SOME CIRCUMSTANCES, TELEPHONE SYSTEMS CAN BE ACCESSED FROM A REMOTE LOCATION AND USED TO MAKE FRAUDULENT TOLL CALLS. DO NOT OPERATE THIS EQUIPMENT WITHOUT FIRST REVIEWING THE INSTRUCTIONS REGARDING TOLL FRAUD, WHICH MAY BE FOUND IN _____. IF YOU HAVE ANY QUESTIONS ABOUT HOW TO PREVENT TOLL FRAUD, CALL _____.

The Commission proposes that the short version of the warning be placed on the "exterior packaging" of the equipment. However, most purchasers never see the "exterior packaging" of a PBX: it is removed by the retailer prior to installation. A warning that is not seen by the customer will not be very effective. NATA believes it would be more appropriate to place the short warning in user

instruction manuals that are seen by the user, e.g., the user's desk set manuals that typically are provided with new telephone sets and/or the "system" instruction manual which may be provided to the office telecommunications manager or to whoever is handling the purchase of the system. Since manufacturer's practices may differ regarding manuals, some flexibility may be required.

Another possibility would be to include the warning as part of the retailer's contract with the end user. Again, however, any requirements placed on retailers must be clearly spelled out so that retailers know what they have to do to comply. Further, it is important to recognize that manufacturer's cannot effectively police the behavior of all retailers. To the extent that warning requirements are placed on retailers, the Commission should explicitly provide that the manufacturer is not responsible for a retailer's failure to comply.

Under the Commission's proposal, in addition to the short-version "exterior packaging" warning, there must also be a longer warning in the user's instruction manual "or other literature accompanying the equipment." The Commission proposes that this warning discuss "the customer's financial exposure and measures available to limit that exposure." In addition:

In the case of PBX and similar equipment, if default codes are set by the manufacturer, vendor, or carrier, those codes must be fully explained in the instructional manual or literature and the warning required by this section must explain the risks of using the equipment without modifying these default codes.

Notice, Appx. E. It seems that this type of warning would have to be drafted differently for different products, so that it may not lend itself to a rule which requires specific language.

Another issue, again, is where the long-version warning should be placed. The term "instructional manual" is unclear: it could refer to the user's desk set manual, a "system" manual provided to the user's telecommunications manager or purchasing department, or to an installation manual which may be seen only by the retailer. The most effective place for the long-version warning is probably in the "system" manual, in most cases. However, a "system" manual may not always be provided to end users. Therefore, some flexibility may be required.

The Commission also asks for comment on whether warnings should be required for previously registered equipment as well as newly registered equipment. Notice, ¶ 40. NATA does not see a problem with requiring warnings for all newly manufactured equipment, including previously registered models. However, some lead time is necessary to implement warnings in new products. The warning requirement, therefore, should not become effective until a reasonable time after publication of the final rule.

Regarding previously manufactured equipment, the Commission asks "whether warnings should be required as updates to manuals currently in use." Id. NATA opposes requiring manufacturers to warn customers in the embedded base, as this would be very burdensome. Equipment owners are not required to keep manufacturers or retailers informed when they dispose of equipment or move to new

addresses. Thus, manufacturers have no reliable means of keeping track of equipment owners for purposes of notification.

In order to ensure that warnings are effective and do not pose insuperable compliance problems, NATA urges the Commission to refer to the toll fraud advisory committee the task of devising warning specifications. The advisory committee should be required to return a recommendation within six months.

We also urge the Commission to rule that manufacturers (and vendors) who comply with warning requirements are not liable for any toll fraud associated with the equipment. As discussed below, it is not clear that the Commission has legal authority to relieve manufacturers and vendors from liability for toll fraud associated with the equipment. However, to the extent that such authority exists, it is appropriate to relieve manufacturers and vendors from liability once they have discharged their obligations.

The Commission also seeks comment on whether it should adopt "standards for determining whether FCC registrations for any classes of particularly risk-prone equipment should be revoked." Notice, ¶ 40. NATA urges that this issue be referred to the industry advisory committee discussed above.

In another section of the Notice, the Commission asks whether "there is software or equipment that customers should install in their CPE to prevent fraud." Notice, ¶ 26. If such requirements are needed, they are most appropriately developed by an advisory committee. Any such requirements should be stated very specifically so that customers know what they need to do to comply.

IV. CARRIER WARNINGS AND SPECIFIC SAFEGUARDS SHOULD BE REQUIRED

The Commission also proposes to require carriers to warn customers of the risks of using carrier services, and to require that these warnings "are communicated effectively to customers through for example, billing inserts, annual notices, or other information distribution methods." Notice, ¶24. NATA supports this requirement. IXCs should be required to provide a full and complete warning to customers, both in their initial contact with customers and in their monthly bills, which specifies that the customer may be held liable for fraud on the IXC's network, and the possible financial consequences associated with such fraud. IXCs should be required to alert customers to the availability of fraud prevention services such as international blocking. If the IXC's tariffs seeks to hold the customer liable for toll fraud, the IXC must clearly and specifically communicate exactly what the IXC expects the customer to do.

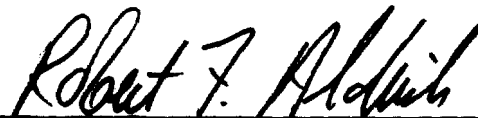
The Commission also should require that LECs give specific warnings to their centrex customers regarding the potential for fraud via remote access to the centrex switch. This warning requirement should parallel the warning given by PBX manufacturers.

The Commission asks what obligations, apart from warnings, carriers should have. Notice, ¶ 41. All carriers should be required to provide fraud monitoring as part of their service offerings to any business user. These required safeguards should include stop-loss limits and immediate customer notification.

The Commission should rule that carriers have an obligation to provide such fraud monitoring services to their customers, and that a carrier who fails to provide such services cannot hold the customer liable even if the customer fails to meet its own specific fraud prevention obligations, if any.

In addition, the Commission should require LECs to offer international blocking to business customers. This matter is currently pending CC Docket No. 91-35, in another proceeding, but no ruling has yet been issued. Policies and Rules Concerning Operator Service Access and Payphone Compensation, Further Notice of Proposed Rulemaking, 8 FCC Rcd 2863 (1993). This may be the single most effective safeguard for preventing fraud. It should be offered by all LECs, and its availability should be communicated to customers by all sectors of the industry -- IXC's, LECs, and equipment vendors.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Robert F. Aldrich, hereby certify that on this 14th day of January, 1994 a true copy of the foregoing Comments of the North American Telecommunications Association was served by messenger, upon the parties listed below.

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